

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

DAVID E. MACK

Plaintiff,

v.

ACCOUNT DISCOVERY SYSTEMS, LLC

Defendant.

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Case No.: 16-cv-373

**DEFENDANT ACCOUNT DISCOVERY SYSTEMS, LLC ANSWER TO
PLAINTIFF'S COMPLAINT**

Defendant Account Discovery Systems, LLC, by and through its undersigned attorneys, Lippes Mathias Wexler Friedman LLP, answering the Complaint, on information and belief:

1. The allegations in Paragraph 1 constitute conclusions of law, to which no response is required. To the extent that a response is required, Defendant denies each and every allegation in Paragraph 1.

2. Lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 2, and therefore denies same.

3. Lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 3, and therefore denies same.

4. Admits that Account Discovery Systems, LLC has a principal place of business of 495 Commerce Drive, Suite 2, Amherst New York. The remaining allegations in Paragraph 4 constitute conclusions of law, to which no response is required. To the extent that a response is required, Defendant denies each and every remaining allegation in Paragraph 4.

5. Lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 5, and therefore denies same.

6. The allegations in Paragraph 6 constitute conclusions of law, to which no response is required. To the extent that a response is required, Defendant denies each and every allegation in Paragraph 6.

7. Lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 7, and therefore denies same.

8. Lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 8, and therefore denies same.

9. Lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 9, and therefore denies same.

10. The allegations in Paragraph 10 constitute conclusions of law, to which no response is required. To the extent that a response is required, Defendant denies each and every allegation in Paragraph 10.

11. Lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 11, and therefore denies same.

12. Lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 12, and therefore denies same.

13. Lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 13, and therefore denies same.

14. Lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 14, and therefore denies same.

15. Lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 15, and therefore denies same.

16. Lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 16, and therefore denies same.

17. Lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 17, and therefore denies same.

18. Lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 18, and therefore denies same.

19. Lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 19, and therefore denies same.

20. Lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 20, and therefore denies same.

21. Lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 21, and therefore denies same.

22. Lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 22, and therefore denies same.

23. Lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 23, and therefore denies same.

24. With respect to Paragraph 24, Defendant repeats and realleges its answer to the allegations set forth in all of its responsive Paragraphs as if same were fully set forth at Paragraph 24.

25. Denies each and every allegation in Paragraph 25.

FIRST AFFIRMATIVE DEFENSE

26. The Complaint fails to state a claim upon which relief can be granted against the answering Defendant.

SECOND AFFIRMATIVE DEFENSE

27. Defendant had the Plaintiff's prior express consent for the conduct or claims alleged in the Complaint.

THIRD AFFIRMATIVE DEFENSE

28. The Plaintiff's claims alleged in the Complaint are barred by the statute of limitations.

FOURTH AFFIRMATIVE DEFENSE

29. Plaintiff failed to mitigate his damages.

FIFTH AFFIRMATIVE DEFENSE

30. Plaintiff's claims may be precluded, in whole or part, to the extent Plaintiff's purported damages, if any, were caused by Plaintiff's acts and/or omissions.

SIXTH AFFIRMATIVE DEFENSE

31. Plaintiff's claims may be precluded, in whole or part, to the extent Plaintiff's purported damages, if any, were caused by third-parties over whom Defendant had no control or authority.

SEVENTH AFFIRMATIVE DEFENSE

32. To the extent Defendant's actions violated the law, such actions were the result of a bona fide error notwithstanding reasonable procedures designed to avoid such error(s).

EIGHTH AFFIRMATIVE DEFENSE

33. To the extent Defendant's actions violated the law, such actions were neither intentional, nor willful.

NINTH AFFIRMATIVE DEFENSE

34. Plaintiff's claims are barred the doctrine of established business relationship.

WHEREFORE, Defendant Account Discovery Systems, LLC respectfully demands judgment against the Plaintiff dismissing the Complaint in its entirety together for such other, further or different relief, not inconsistent herewith, as may be just, equitable and proper, together with the costs and disbursements of this action.

DATED: June 27, 2016

LIPPES MATHIAS WEXLER FRIEDMAN LLP

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